

5 June 2018

Agenda Item: 8

REPORT OF CORPORATE DIRECTOR OF PLACE

PROPOSAL: APPLICATION TO ADD A FOOTPATH TO THE NOTTINGHAMSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT

LOCATION: HIGHLAND GROVE, TO WORKSOP BRIDLEWAY NO. 34, KILTON HILL, WORKSOP

APPLICANT: MR OSBORNE, HIGHLAND GROVE, WORKSOP.

Purpose of the Report

1. To consider an application for a Modification Order made by Mr Osborne of Highland Grove to record a route as a public footpath on the Definitive Map and Statement for the Parish of Worksop. A map of the surrounding area is shown on **Plan B** and the route under consideration is shown on **Plan A** and marked between points A and E.
2. The effect of the application, if accepted, would be to make a Modification Order which, if subsequently confirmed, would add a public footpath from its junction with the adopted section of Highland Grove to its junction with Worksop Bridleway No.34.

Legal Background

3. The application is made under the provisions of the Wildlife and Countryside Act 1981 (WCA81). Section 53(3)(b) of WCA81 requires the Surveying Authority (Nottinghamshire County Council) to modify the Definitive Map and Statement following "the expiration in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path".
4. In addition, under Section 53(2)(b) of WCA81 the surveying authority has a duty to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of the occurrence of events described in Section 53(3)(c)(i); namely "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates".

5. Section 31 of the Highways Act 1980 (HA80) raises a statutory presumption that a right of way has been dedicated as a highway if the route has been used by the public 'as of right' (without force, without secrecy, or without permission) and without interruption for a period of 20 years unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is to be calculated retrospectively from the date when the right of the public to use the way is first brought into question.
6. If it is accepted that dedication may be presumed at law, consideration must also be given to the category of highway that is believed to exist i.e. footpath, bridleway, or restricted byway. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
7. Should the test under Section 31 fail, then it may be appropriate to consider whether the way has been dedicated at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of the use of a path by the public 'as of right' may support an inference of dedication and may also show acceptance by the public.

The Current Situation

8. The route for which the application was made starts at the end of the adopted section of Highland Grove and goes down a tarmac path at the side of No. 34 Highland Grove as shown in Photographs 1 and 2. The claimed path then continues into the hospital grounds by a car park as shown in photograph 3. At this point there are a number of internal Hospital access roads inbetween old hospital buildings. The route goes along one of the internal access roads of the Bassetlaw Hospital to meet up with Worksop Bridleway No. 34 as shown in photograph 4. The hospital, who owned land over which the claimed footpath runs and owned a number of properties on Highland Grove, sold No. 34 and 36 Highland Grove which included section A to C of the claimed route. The current owner then blocked off the claimed route at point A as shown on photograph 5 and at point C shown in photograph 6.

Documentary Evidence

9. There is no documentary evidence that indicates that this route was recorded as a public right of way in the past. However, some of the claimants have very helpfully submitted various plans for the area showing what it was like from the 1900's to the 1930's although none of them showed the claimed route in its entirety.
10. Following on from the National Parks and Access to the Countryside Act 1949, a survey of every parish and urban area was carried out to show the location of what was considered to be public rights of way within those areas. The survey of Worksop was undertaken in 1953 and for this part of Worksop it was carried out by Mr W. Straw from Blyth Grove. The application route was not claimed as a public right of way at this date although the bridleway along Blyth Grove was and became Worksop Bridleway No. 34.

11. Aerial photographs from 1971 onwards show that the path from the end of Highland Grove was in place at that stage as was most of the internal road network of the hospital. Subsequent aerial photos and Ordnance Survey plans all show that the claimed route is physically in existence. However, none of the Ordnance Survey plans give any status to the route that is shown as being either public or private.

The Application.

12. In July 2017 Mr Osborne of Highland Grove submitted an application to the County Council applying for a Modification Order to add a footpath from the end of Highland Grove to join up with Worksop Bridleway No. 34.

13. It is worth noting that a previous application was submitted in March 2017 by Stuart Thorpe, also of Highland Grove, for exactly the same route. With this first application only one user evidence form was submitted in support and Mr Thorpe indicated that he would not be submitting any more evidence. This meant that there was insufficient evidence to substantiate Mr Thorpe's claim and to reasonably allege that the footpath existed. Therefore Mr Thorpe's application was rejected and he did not appeal against this. Following this Mr Osborne submitted his application for exactly the same route, and this time 5 user evidence forms were sent in support.

14. A consultation was carried out at the beginning of October 2017 with the user groups, the statutory undertakers and the local County Councillor to let them know that the application had been submitted to the County Council. In response to this, County Councillor Gilfoyle then contacted all the residents of Highland Grove to see if they wanted to submit any information either in support or objection to the application. Following on from this, information was sent in by 6 more people who lived on Highland Grove, some of whom supported the application whilst others objected. Table 1 shows the details of the user evidence that was submitted for this application all of whom currently live or have lived on Highland Grove. Some letters were sent to the claimants to clarify certain points and to ask if they wanted to submit anymore information. Five of the members of the public who submitted information were interviewed so that they could clarify information about the claim.

15. Most of the evidence both in support and against the application relates to the short section of the route that runs between the end of Highland Grove and the hospital car park, section A to C. Very little information has been submitted that relates to the section between the carpark and Worksop Bridleway No. 34, Section C to E. There is also a slight discrepancy between what some of the claimants have stated that they used between section C and D with some of them stating that they went diagonally across the car park and others going around the access road.

16. In order to calculate the relevant 20 year period, the right to use the route must be challenged in some way sufficient to bring it home to the users that their right to use the path been called into question. Once this date has been established then the 20 year period can then be calculated retrospectively. In this particular application there was an emphatic challenge to public use in 2017 when the section from A to C was physically blocked off with timber fences after Shaun Wass, the developer, bought the land and fenced it off. (See photographs 5 and 6).

17. However, use of a path can also be challenged by the erection of a sign that denies the existence of a right of way, so consideration must be given to any previous signs that may constitute a challenge to those using the claimed route. Quite a lot of information has been submitted concerning whether there were any signs along the section from A to C, what they said and how long they were up for. Photograph 7 shows a sign on the side of No. 34 Highland Grove which does have the wording 'No Public Right of Way, NHS Staff Access to Hospital site only'. This sign was erected sometime between January and March 2017. The wording of this sign is emphatic and in such a place to be seen by those using the path and is considered to be a challenge to the right to use the path. Soon after this sign was put up, fences were erected at points A and C. The owner has since made a planning application to Bassetlaw District Council to develop the area through which the claimed path runs.

18. A photo was submitted dated 2013 that shows the existence of a sign on the side of No. 34 Highland Grove, adjacent to the claimed route, Photo 8. Although it is not possible to see the exact wording of this sign, a similar sign was found after the site was purchased from the hospital. (See photograph 9). The wording on the sign is as follows:

Hospital staff
Access only.
No public right
of way
Strictly no
dogs allowed

The wording of this particular sign is again very emphatic to challenge use of the path stating that there was 'no public right of way' and that the path was for hospital staff only. Although this sign was adjacent to the path its presence would be sufficient to challenge use of the path.

19. In 2009 Google Streetview went down to the end of Highland Grove and took a picture looking down the path (Photo 10). This photograph shows that there was a fence with a gap in the middle which looks wide enough to be able to walk through and on the fences at either side of the gap there were 5 signs in place at that date. Although the signs in the photograph are difficult to read, it appears there is a blue sign with white writing which is the same as the one that is detailed above. This wording would again have challenged those people using the path.

20. A number of the claimants also mention that there were signs on the path with Stuart Thorpe saying in 2017 that he could remember a sign went up about 10 years ago advising it was not a public right of way but this was later removed. This would place the date of the sign as being about 2007. Similarly Peter Thorpe says in his user evidence form dated 2017 that a sign was put up by the hospital approximately 20 years ago saying that the path was for hospital staff only. This would give a date for this sign as being about 1997. Helmuth Osborne says that he thought that a sign went up in 1992 with the wording 'no right of way'. Diane Blood can remember that in about 1988 a sign was erected with wording similar to 'for the use of hospital staff only' and that it was at the top of the drive close to point A. Four other members of the public who submitted information to the County Council also mention the signs, but weren't able to specify a date as to when they were in place or the exact wording. The wording 'for the use of hospital staff only' whilst not as emphatic as 'no public right of way' was never-the-less a clear message from the hospital that they did not intend the route to become a public right of way. Some of the claimants also stated that the signs were not in place continually but that they

appeared and disappeared during the years. Stuart Thorpe did submit some family photographs that indicated that the signs were not in place on the fence nor on the side of the building from 2010 onwards.

21. Based on this information the date of challenge would appear to be back as far as 1988 when the signs were first mentioned by the claimants. This date seems to coincide with when Bassetlaw District Hospital took over the running of No 32 and 34 Highland Grove. From the information submitted it does seem clear that there have been intermittent signs on the section from A to C that would also have had the effect of challenging use of the path. Therefore the relevant 20 year period would be from 1968 to 1988, the date when the first sign is mentioned by one of the claimants.
22. Information was also supplied by Richard Penney, who was employed in the Estate Department of Bassetlaw Hospital from 1979 to 2001, who stated that there were signs in place from the late 1980's until at least 2001 when he moved away and he was therefore not in a position to comment on what took place after this date.
23. Set out below is a summary of specific dates given by the claimants as well as the photographs for when there was a sign challenging people.

2017	Path physically blocked off between A and C	Photograph 5 and 6
2017	Photograph of a sign on the side of No. 34 Highland Grove adjacent to the path	Photograph 7
2013	Photograph of a sign on the side of No. 34 Highland Grove adjacent to the path	Photograph 8
2009	Photograph by Google Streetview of sign in the middle of section A to B.	Photograph 10
2007?	Sign erected about 10 years ago advising not a public right of way.	Stuart Thorpe
1997?	Sign erected about 20 years ago saying for hospital staff only.	Peter Thorpe
1992	'No right of way' sign erected for a short time.	Helmuth Osborne
1988	Sign at the top of the drive for 'hospital staff only'	Diane Blood

24. Eight user evidence forms were submitted in support of the path with there being information from 5 other people giving varying details about path use. There is some evidence of use by some of the claimants when they were growing up either on Highland Grove or living nearby. The claimants' use of the claimed route starts in 1968 and then goes on to 2017 which was when the route was blocked off following the sale of the land and buildings at the end of Highland Grove. According to the claimants, there has never been a time when the path has not been available to use. Some of the claimants mention that in the first section of the path, at point B, there was a gate, although as far as they could recall it was always open and never prevented use of the section from the end of Highland Grove to the hospital access road. Stuart

Thorpe can remember that when he moved back into Highland Grove in 1989 the gate was there but it was removed a few years later.

25. The claimants have stated that the path was used by people of Highland Grove as well as hospital staff and visitors and school children. Some of them have also said that it was a short cut to get to the shops on Kilton Hill. One of the claimants, Leonard Williams used the route as his daily route to work at the hospital.
26. Only one of the claimants said that they had ever been verbally challenged by anyone whilst using the claimed route. Diane Blood said that once the sign went up in 1988 for a week there was a concerted effort by staff at No. 34 Highland Grove to try and stop people using the path. None of the other claimants who submitted information said that they were ever challenged. Richard Penney, the Estates Manager for the hospital between 1979 to 2001 stated that he was aware that school children were using the path and so he contacted the head of Valley School to advise them that the path was not a public right of way. He also said that he had instructed the Hospital Porting staff to challenge and advise individuals that the public right of way was down Blyth Grove.
27. None of the claimants have stated that they have been given permission to use the route by any persons or organisations. One of the claimants, who worked at the hospital used part of the claimed route as his daily walk to and from the wards. However, it could be argued that his use of the path would have been by implied permission as the land over which the path runs was all owned by the hospital. However, part of his use of the path was outside of his working hours at the hospital when he used the path as a through route to get to the shops on Kilton Hill and therefore would be relevant use of the path. A lot of the claimants do mention that the path was used by hospital staff and patients visiting the hospital. This use of the path is not considered to be public use as it would be either as an employee of the hospital or by invitation to visit. Also it is perhaps unlikely that these people would have used the entire claimed route during their visit but just part of it to get to the hospital buildings.

Reason/s for Recommendation/s

28. From the evidence submitted it does seem as though there has been uninterrupted use of the path from the end of Highland Grove to the hospital carpark and through to Kilton Hill and that there was never any physical challenge to the use of the path either from the end of Highland Grove nor on the section that went along the hospital access roads until 2017. There also does not seem to have been any consistent attempt to physically or verbally challenge people using the route. In fact, once people were walking along the hospital access roads it would have been difficult to determine who was using the path as of right and who was using the path as part of accessing the hospital. It is possible that people would have still used the route and not been aware of the signs or their particular wording as they were still able to use the path freely with there being no physical or verbal challenge. However, regardless of this, what seems to be consistent is that there have been signs along the section of the route from A to C as early as 1988. Most of the claimants do say that a lot of people also used the path but only 9 user evidence forms were submitted in support of the application, as shown in table 1. There is only one person, Jack Romano, who has used the path for whole of the relevant period from 1968 to 1988 with a few of the other claimants saying that they used the path for part of this time. Officers would advise this is not sufficient evidence to make a reasonable allegation that the

path has been used for the relevant 20 year period and therefore recommend that the application should be turned down.

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Implications

Implementation of the proposals within this report might be considered to have a minimal impact on human rights (such as the right to respect for private and family life and the right to peaceful enjoyment of property, for example). However, the authority is entitled to affect these rights where it is an accordance with the law and is both necessary and proportionate to do so, in the interests of public safety, to prevent disorder and crime, to protect health, and to protect the rights and freedom of others. The proposals within this report are considered to be within the scope of such legitimate aims.

RECOMMENDATION/S

It is recommended that Committee turns down the application for a Modification Order to modify the Definitive Map and Statement on the basis for the reasons set out above that the evidence shows that a right of way is not reasonably alleged to exist.

For any enquiries about this report please contact:

Angus Trundle (0115 9774961)

Commons and Greens and Definitive Map Officer

Constitutional Comments [SJE 10/05/2018]

30. This decision falls within the Terms of Reference of the Planning and Licensing Committee to whom the responsibility for the exercise of the Authority's regulatory functions relating to public rights of way has been delegated.

Financial Comments [SES 09/05/18]

31. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Modification Order Case file

Electoral Division and Member Affected

- Worksop East, Councillor Glynn Gilfoyle